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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,207	02/28/2002	Patrick Jay Lutz	5408/11295-US2	7037
7278	7590	04/27/2004		
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			EXAMINER PRYOR, ALTON NATHANIEL	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 04/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/087,207	Applicant(s) LUTZ, PATRICK JAY	
	Examiner Alton N. Pryor	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-5, 11-22, 24-29, 31-43 and 46-82 is/are pending in the application.
- 4a) Of the above claim(s) 13, 15-17, 19-21, 28-30, 56, 61, 66, 71 and 81 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 47-50 is/are allowed.
- 6) ☐ Claim(s) 1-5, 11, 12, 14, 18, 22, 24-27, 31-43, 46, 51-55, 57-60, 62-65, 67-70, 72-80, 82 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

I. Rejection of claims 1-5, 11-17, 24-27, 33, 34, 44, 51 under 35 USC 102(b) as being anticipated by Wan will not be maintained in light of amendment filed 2/20/04 for reason on record and reasons as follows. Applicant has deleted aromatic acids from the claims.

II. Rejection of claims 1-5, 11, 12, 24-27, 33, 34, 44, 45, 51 under 35 USC 102(b) as being anticipated by Adachi will not be maintained in light of amendment filed 2/20/04 for reason on record and reasons as follows. Applicant has deleted aromatic acids from the claims.

III. Applicant's arguments filed 2/20/04, with respect to the rejection(s) of claim(s) under 35 USC 102(b) and 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of rejection below.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24-27, 39-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 24-27, 39-42 recites the limitation "aromatic carboxylic acid". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 11, 12, 14, 18, 22, 24-27, 31-43, 46, 51 and new claims 52-55, 57-60, 62-65, 67-70, 72-80, 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adachi on record and Biedermann on record.

Adachi teaches a method of applying to skin (substrate) a composition comprising benzethonium chloride and salicylic acid to inhibit acne (microorganism). See abstract. Adachi does not teach the instant invention comprising hydroacetic acid and glycols. However, Biedermann teaches a method of applying a composition comprising hydroacetic acid and glycols to skin to treat acne by controlling sebaceous gland activity. See abstract, column 2 lines 33-38, column 3 line 45 – column 5 line 53, column 12 line 59 – column 12 line 12. It would have been obvious to one having ordinary skill in the art to modify the invention of Adachi to include dehydroacetic acid and glycols. One having ordinary skill in the art would have been motivated to do this since compositions comprising dehydroacetic acid and glycols treat acne by controlling sebaceous gland activity. With respect to the instant ratio of ingredients (hydroacetic acid : benzethonium chloride or salicylic acid : benzethonium chloride) the optimum ratios would have been determined through routine experimentation. One having ordinary skill in the art would have been motivated to do this in order to develop the

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most effective method for controlling the secretion of oils from the sebaceous gland to reduce acne. Applicant argues that compositions comprising 0.25% sodium dehydroacetate monohydrate and 0.50% benzene thonium chloride show unexpected results. Applicant refers Examiner to Example 1. Examiner argues, while this may be true, Applicant does not claim a composition that recites this specific combination.

IV. Claims 47-50 are allowable for reason on record.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 703 308-4691. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305-3592 for regular communications and 703-305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1235.


ALTON N. PRYOR
Alton N. Pryor, AU 1616
PRIMARY EXAMINER
April 24, 2004